APPENDIX A

I. The Lease.—(C-M. 10):

The lease recites that the lessors are as follows:

"Frank Poafpybitty, Carl Poafpybitty, Thompson Poafpybitty, Louise Poafpybitty and Laverne Aitson, a minor male born in 1928, heirs of Ma-Rah-Wad-Di (Comanche) by John T. Montgomery, Superintendent, Kiowa Indian Agency, for said minor.

* * * * * *

"2. The term 'oil and gas supervisor' as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term 'superintendent' as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased."

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The lease recites: "$2860.80 paid to the Superintendent of the Indian Agency."

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"3. * * * lessee hereby agrees: (b) Wells (1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining land not the property of the lessor, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage. Provided, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior, * * * Provided, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regu-

lations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; * * *."

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"3. * * * the lessee hereby agrees: (c) Rental and royalty.—To pay, beginning with the date of approval of the lease by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be 'royalty free.' * * * All rental and royalty payments except as provided in Sections 8(a) and 4(c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the Superintendent." (Section 8(a) applies only when supervision by the Secretary has been relinquished. Section 4(c) applies only when royalty is paid in kind.)

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"3. * * * the lessee hereby agrees: (d) Monthly statements.—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the superintendent, the royalty due the lessor. * * * The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open

at all times for the inspection of any duly authorized representative of the Secretary of the Interior."

* * * * * *

"3. * * * the lessee hereby agrees: (f) * * * to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to the prevention of waste and preservation of the property and the health and safety of the workmen; * * *."

* * * * * *

"3. * * * the lessee hereby agrees: (g) Regulations. —To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases; Provided, That no regulations hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease."

* * * * * *

"6. Cancellation and forfeiture.—When, in the opinion of the Secretary of the Interior, there has been a violation of any of the terms and conditions of this lease before restrictions are removed, the Secretary of the Interior shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land; Provided, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee."

* * * * * *

"8. Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage cov-

ered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as provided in section 3(c) * * *."

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"10. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, * * *."

II. The Regulations.—

These Regulations are found in "Chapter 1—Bureau of Indian Affairs—Title 25 Part 189 (effective till 1957) and Part 172 (effective in 1957 and thereafter)—Leasing Of Allotted Lands For Mining" and "Code of Federal Regulations —Title 30—Mineral Resources Chapter II—Part 221—Oil and Gas Operating Regulations." The references hereinafter contained will be to the numerical sections of the Chapters and Parts above referred to.

As indicated by the title description just given, Title 25, Sections 189.1 and 172.1, et seq., deal with "Leasing," the form and requisites of the lease and definitions of terms to be used therein and of officers upon whom duties and responsibilities are to be cast thereby, such as "superintendent" and "supervisor," two of the most important of said officers for present consideration.

Title 30, Sections 221.1, et seq., as indicated, deal with Oil and Gas Operations, that is, the control under the overall plan which the Government, as guardian of the Indians, has arranged, promulgated and placed in operation. These regulations also specify and define the controlling agencies of the Government.

"§ 189.1 (172.1) Definitions. (a) The term 'superintendent' in this part refers to the superintendent or other officer of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the allotments involved.

"(b) The term 'supervisor' in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid."

* * * * * *

"§ 172.14 Payment of advance rentals and royalties. (a) Except as provided in paragraphs (b), (d) and (f) of this section, all rents, royalties and other payments due under leases which have been or may be approved in accordance with this part shall be paid by check or bank draft to the order of the Treasurer of the United States and transmitted through the supervisor to the Superintendent for deposit to the credit of the various lessors. When lessees and purchasers are instructed, in writing, by the Superintendent, which instructions shall be complete as to lessors for each lease, separate remittances for each payment due each lessor shall be made to the Superintendent." (Paragraphs (b), (d) and (f) are irrelevant here.)

* * * * * *

"§ 221.1 INTRODUCTION. The regulations in this part will govern the development and production of deposits of oil, gas and casinghead or natural gasoline, including propane, butane, and other hydrocarbons, and fluids, and lands containing such deposits owned or controlled by the United States, and under jurisdiction of the Secretary by law or administrative ar-

rangement. The regulations in this part shall be administered under the Director of the Geological Survey, except that as to lands within naval petroleum reserves they shall be administered under such official as the Secretary of the Navy shall designate."

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"§ 221.2 DEFINITIONS. The following terms as used in the regulations in this part shall have the meanings here given:

"(a) SECRETARY. The Secretary of the Interior, except where lands in naval petroleum reserves are involved, and in that case the Secretary of the Navy.

* * * * * *

"(c) SUPERVISOR. A representative of the Secretary, under administrative direction of the Director, authorized and empowered to supervise and direct oil and gas operations and to perform other duties prescribed in the regulations in this part, or any subordinate of such representative acting under his direction."

* * * * * *

"§ 221.3 JURISDICTION. Drilling and producing operations, handling and gaging of oil and the measurement of gas or other products, determination of royalty liability, receipt and delivery to those entitled thereto of royalty accruing to the lessor and paid in amount of production, determination of amount and manner of payment of damages assessed under authority of the regulations in this part for defaults or noncompliance with duties by the lessee and, in general, all operations subject to the regulations in this part are under the jurisdiction of the supervisor for any district as delineated by the Director. As to producing leases of Indian lands, the officer in charge, and as to land within naval petroleum reserves, the supervisor shall determine rental liability, record rentals, royalties, and other payments, and maintain lease accounts. * * *"

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"§ 221.4 GENERAL FUNCTIONS. The supervisor is hereby authorized to require compliance with lease terms, with the regulations in this part, and all other applicable regulations, and with applicable law to the end that all operations shall conform to the best practice and shall be conducted in such manner as to protect the deposits of the leased lands and result in the maximum ultimate recovery of oil, gas or other products with minimum waste. Inasmuch as conditions in one area may vary widely from conditions in another area, the regulations in this part are general, and detailed procedure hereunder in any particular area is subject to the judgment and discretion of the Supervisor, and to any area plan of development that may be adopted pursuant to law. * * *"

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Section 221.18 in part:

"The Lessee shall comply with the terms of the lease, and of the regulations in this part and any amendments thereof, and with the written instructions of the supervisor, * * *."

Section 221.21 in part:

"(c) The lessee shall drill diligently, and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage, or, in lieu thereof, with the consent of the supervisor, he must pay a sum estimated to reimburse the lessor for such loss of royalty, the sum to be computed monthly by the supervisor."

Section 221.35 in part:

"The production of oil and gas shall be restricted to such amount as can be put to beneficial use with adequate realization of values, and in order to avoid ex-

cessive production of either oil or gas, when required by the Secretary, shall be limited by the market demand for gas or by the market demand for oil."

Section 221.40 in part:

"(a) When due in money, the lessee shall tender all payments of rental and royalty by check or draft on a solvent bank, or by money order drawn to the order of the appropriate receiving officer, * * *."

Section 221.62 in part:

"When directed by the supervisor, a monthly report shall be made by the lessee in duplicate, on Form 9-361 or 9-361A, showing each run of oil, all sales of gas, gasoline, other lease products, and the royalty accruing therefrom to the lessor. * * *."

Section 221.63 in part:

"Form 9-614A, completely filled out and signed, shall be submitted to the supervisor in triplicate and shall accompany each remittance covering payments of royalty or rental on Indian lands."

Section 221.60 in part:

"A separate report of operations for each lease must be made on Form 9-329 for public land and on Form 9-329A for Indian land, for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed in duplicate with the supervisor on or before the 6th day of the succeeding month, unless an extension of time for the filing of such report is granted by the supervisor."

Title 25, Section 172.23 in part:

"(a) A lease will be cancelled by the Secretary of the Interior for good cause upon application of the

lessor or lessee, or if at any time the Secretary is satisfied that the provision of the lease or of any regulations heretofore or hereafter prescribed have been violated."

Title 30, Section 221.66:

"§ 221.66 Appeals. An appeal from any order issued under Authority of the regulations in this part may be filed as hereinafter set forth in this section. Compliance with any such order shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the Director, or the Secretary (dependent upon the officer with whom the appeal is pending), and then only upon a determination that such suspension will not be detrimental to the lessor or upon the submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

"(a) An appeal to the Director may be taken from any order of the supervisor by filing such appeal with the latter officer within 20 days after service of the order. The appeal shall incorporate or be accompanied by such written showing and argument on the facts and law as the appellant may deem adequate to justify reversal or modification of the order. All statements of facts must be made under oath.

"(b) The supervisor shall transmit the appeal and accompanying papers to the Director with a full report and recommendations in the premises and that officer shall review the record and render such a decision in the case as he deems proper.

"(c) An appeal from any decision of the Director may be taken to the Secretary within 30 days after service of the Director's decision. The appeal shall be accompanied by such written showing and argument on the facts and law as appellant may deem adequate to justify reversal or modification of the decision. Any

statement of facts not submitted to the Director must be made under oath.

"(d) Oral argument in any case pending before the supervisor, the Director, or the Secretary will be allowed on motion in the discretion of such officer and at a time to be fixed by him.

"(e) The procedure for appeals involving leases for public land shall be followed for leases on the naval petroleum reserves and Indian land except that, with regard to the Naval Petroleum Reserves, the Director of Naval Petroleum Reserves, and with regard to Indian land, the Commissioner of Indian Affairs will exercise the functions vested in the Director."